

Remarks

I. Claim amendments

Claims 1 and 3-15 are pending in this application. Applicant has canceled claim 2 and incorporated its subject matter into claim 1. Claim 14, which previously depended from claim 2, has been amended to depend from claim 1.

II. Rejection under 35 U.S.C. § 102

The Examiner rejected claims 1-4, 9-11 and 14 under 35 U.S.C. § 102(b) as being anticipated by the disclosure of U.S. Patent No. 5,447,151 to Bruna et al. ("Bruna"). In support of the rejection, the Examiner stated that the powder inhaler disclosed in Bruna comprises an actuating means (2), a metering rod and a closure element (85) adapted to plug the air channel around the metering rod in a substantially waterproof manner. Specifically with respect to original claim 2, the Examiner asserted that the Figures of Bruna illustrate that the actuating means (2) communicates or is connected with the closure element (85), via the mechanical linkage of the pusher (2). Applicant respectfully traverses this rejection.

Claim 1 recites that the actuating means in the powder inhaler of the invention communicates or is connected with the recited closure element. Movement of the actuating means by the user will therefore result in the movement of the closure element. Specification at page 3, lines 28-32. For instance, actuation of the device by the user prompts the closure element to move to a position in which it no longer plugs the air channel. Specification at page 3, lines 36-38. The closure member may thereafter return to its plugging position when the actuating means is released. Specification at page 3, lines 38-39. Communication between the actuating means and the closure element assists in protecting sensitive parts of the device from moisture and dirt. Specification at page 3, line 39 to page 4, line 3.

Citing to "the Figures" of the Bruna patent, the Examiner concluded that the disclosed actuating means (2) communicates or is connected with the non-return valve (85) via the "mechanical linkage of the pusher (2)." The applicant does not agree. The actuating means (2) in the Bruna inhaler is not disclosed as communicating or connected with the non-return valve (85). Applicant respectfully requests that the

Examiner identify which Figures in the Bruna disclosure are believed to contain that teaching. At least Figures 3, 4, 9-12 and 17 appear to include views of the actuating means (2) and non-return valve (85). In each instance, the applicant sees no "mechanical linkage" or other communication or connection between the pusher (2) and non-return valve (85). Absent a teaching of at least this element of the invention, the Bruna disclosure does not anticipate any of the claims.

The Bruna disclosure also would not have made the present invention obvious. The disclosed purpose of the non-return valve (85) is to enable the user to suck air through the mouthpiece and to prevent the user from blowing air into the suction channel. Bruna at col. 3, lines 19-22; col. 14, lines 18-31; col. 27, lines 18-22. The non-return valve thus opens and closes depending on the inhalation force of the user. The document does not suggest abandoning this relationship and instead tying the opening and closing of the non-return valve to mechanical interaction with the inhaler's actuator.

The distinction drawn above highlights a beneficial aspect of the invention mentioned in the Response filed on October 8, 2003. The one-way valve (85) in Bruna can be tightly sealed against the shoulder (shown in Fig. 3, for example) only by applying pressure on the valve member, e.g., by means of a spring, such that the surfaces are pressed tightly against each other. Because the non-return valve is opened only as a result of the inhalation force of the user, overcoming the force of the spring can make it all the more difficult for an asthmatic patient with reduced lung capacity to produce an air stream sufficient to aerosolize the medicament in the inhaler. The device of the invention, in contrast, avoids this problem by tying the movement of the closure element to the actuator. It therefore provides an effective seal around the metering member without compromising the free flow of an air stream in the air channel.

For at least these reasons, the claimed invention would not have been obvious in view of the Bruna disclosure.

III. Rejection under 35 U.S.C. § 103(a)

Claims 12 and 13 were rejected under 35 U.S.C. § 103(a) over Bruna in view of WO 90/02576. The Examiner stated that Bruna discloses powder inhalers having all features recited in claim 12 except the recited second sealing means. The Examiner concluded that it would have been obvious to include a certain sealing means from the inhalers disclosed in WO 90/02576 into the inhalers of Bruna to make the claimed invention.

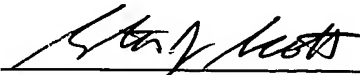
As explained in response to the first rejection, Bruna does not teach the features of claim 1 and does not render claim 1 obvious. As a result, dependent claims 12 and 13 are also novel and non-obvious in view of Bruna alone. The Examiner relied on WO 90/02576 only for a teaching of a second sealing means. A teaching of a second sealing means in combination with the Bruna disclosure still does not suggest the invention of claim 1 and thus its dependent claims including claims 12 and 13. For at least this reason, this rejection should be withdrawn. By responding to the rejection in this manner, the applicant does not acquiesce or agree to the Examiner's proposed combination of documents or other substantive remarks made on page 4 of the Office Action.

In view of the amendments and remarks above, all pending claims should be in condition for allowance. If there is any fee due in connection with the filing of this Amendment, please charge the fee to our Deposit Account No. 06-0916.

Respectfully submitted,

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